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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re New Life Ministries

Serial No. 76219400

Kay Lyn Schwartz of Gardere Wynne Sewell LLP for New Life Ministries.

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(K. Margaret Le, Managing Attorney).

Before Quinn, Walters and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Applicant, New Life Ministries, has appealed from the final refusal of the trademark examining attorney to register the mark NEW LIFE MINISTRIES for the following services (as amended):<sup>1</sup>

Management services, namely, operating out-patient rehabilitation treatment centers for the treatment of psychiatric disorders, victims of abuse, drug and alcohol abuse, co-dependency, sexual disorders, and eating disorders and the operation of a residential facility for

<sup>1</sup> Application Serial No. 76219400; filed March 2, 2001, alleging first use and first use in commerce on October 1, 1998.

the treatment of chemical dependency, mail order catalog services featuring books, audio tapes and video tapes in the field of religion, apparel and health products. Class 35.

Entertainment in the nature of ongoing radio programs in the field of religion featuring an inbound call center for making counseling referrals to licensed mental health professionals. Class 41.

The word "MINISTRIES" has been disclaimed.

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to applicant's goods, so resembles the registered mark NEW LIFE RUNDOWN for "religious and ministerial services, namely pastoral counselling [sic]"<sup>2</sup> as to be likely to cause confusion.<sup>3</sup> The registration contains a disclaimer of "RUNDOWN."

When the refusal was made final, applicant appealed. Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

In any likelihood of confusion analysis, we look to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention

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<sup>2</sup> Registration No. 1456923, issued September 8, 1987; Sections 8 and 15 affidavits accepted and acknowledged, respectively.

<sup>3</sup> The examining attorney had initially refused registration under Section 2(d) on the basis of three additional registrations (Registration Nos. 1683329, 1793970 and 2209064). Two of those registrations were subsequently cancelled by the Office and the refusals as to all three registrations were later withdrawn.

to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ["The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and the differences in the marks."].

In arguing that the marks are similar, the examining attorney contends that the term NEW LIFE is the dominant portion of each mark and that applicant "has merely deleted the third element of the registered mark (RUNDOWN) and replaced it with a descriptive term (MINISTRIES)." (Brief, p. 3.) Based on this analysis, the examining attorney concludes that applicant's mark NEW LIFE MINISTRIES and registrant's mark NEW LIFE RUNDOWN create the same commercial impressions.

It is well settled that marks must be considered in their entirety and that the commercial impressions are conveyed by the marks as a whole, including any disclaimed words in the marks. When we compare NEW LIFE MINISTRIES and NEW LIFE RUNDOWN in their entirety, we find that the two marks have different meanings and create different overall commercial impressions.

Applicant's mark NEW LIFE MINISTRIES conveys the idea of a ministry fostering a better or improved life for its members. The mark NEW LIFE RUNDOWN, on the other hand, conveys a more

ambiguous meaning. The word "rundown" has a number of dictionary meanings (of which we take judicial notice), including the most likely meaning, in the context of registrant's services, of a report or analysis of some kind. However, when that word is combined with the phrase NEW LIFE, the result is an unusual expression whose overall meaning is not entirely clear. Moreover, since Section 6(a) of the Trademark Act allows an applicant to voluntarily disclaim even a registrable component of a mark (see *In re MCI Communications Corp.*, 21 USPQ2d 1534 (ComrPats 1991)), we cannot conclude that RUNDOWN was disclaimed due to a finding that the term is descriptive of registrant's services. Under the circumstances, the vast differences in the words MINISTRIES and RUNDOWN are sufficient to distinguish the marks as a whole.

Turning to the services, applicant operates a rehabilitation center for those with psychiatric and emotional disorders and also provides a religious themed radio program offering counseling referrals to mental health professionals. Registrant's services are identified as pastoral counseling services.

The examining attorney has made of record several third-party registrations showing generally that the same marks are registered for both religious radio programs and religious counseling services. In addition, the examining attorney has

submitted two Nexis excerpts and additional third-party registrations to show that religious ministries may also produce religious radio programs.

By this evidence, the examining attorney has attempted to show that ministerial radio programs and ministerial counseling are related services. They may be, but those are not the services we need to compare. The question of likelihood of confusion must be determined on the basis of the services as set forth in the application and registration, and applicant's services are narrowly described in the application as a radio program that offers counseling referrals to mental health professionals.

In comparing applicant's services as described in its application with registrant's pastoral counseling services, we find that they are not related. Pastoral counseling denotes religious or spiritual care or guidance. The evidence does not show, and we cannot presume, that pastoral counseling services would typically extend beyond counseling on religious and spiritual matters to the type of counseling that would be required for the treatment of psychiatric or emotional disorders, or, generally, to the type of counseling that a mental health professional would provide.

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We conclude that the cumulative differences in the respective marks and the services offered thereunder make confusion unlikely.

Decision: The refusal to register is reversed.